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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

MARK V. GUZMAN,	AUG 3 1 2017 PX
Plaintiff, v.	THOMAS G. BRUTON CLERK, U.S. DISTRICT COURT Judge Blakey Magistrate Judge Rowland JURY TRIAL DEMANDED 9/7/2017
PEPSI COLA BOTTLING CO., a/k/a PEPSICO, INC. Defendant.	THOMAS G. BRUTON CLERK, U.S. DISTRICT COURT
Defendant.	COMPLAINT W/ CORRECTED PEDACTED EXHIBITS

Plaintiff, Mark V. Guzman [hereinafter Plaintiff], states as follows as his Complaint against PEPSI COLA BOTTLING CO., a/k/a PEPSICO, INC {hereinafter Defendant].

PARTIES

- 1. Plaintiff is a male citizen and resident of the State of Illinois residing in Oak
 Lawn in the County of Cook. Mr. Guzman was formerly employed by Pepsi Cola Bottling Co.,
 a/k/a Pepsico, Inc. (and hereinafter referred to as Pepsico) as a Blue card Merchandiser.
 - 2. Defendant, Pepsico, is incorporated under the laws of the State of Delaware.
- 3. At all times relevant to this action, Pepsico was doing and conducting business as Pepsi Cola Bottling Co., which also operates under the name of Pepsico at 1500 Touhy Ave., Elk Grove Village, Illinois. Defendant is an employer with the meaning of 42 U.S.C. §2000e (b) and employs more than 500 people.

JURISDICTION AND VENUE

4. Jurisdiction in this Court is proper pursuant to 28 U.S.C. §1331.

5. This Court can exercise personal jurisdiction over Pepsico and venue is proper in this District because the acts complained of herein took place in this District, and at all relevant times Pepsico regularly and continuously transacted and was doing business within this District.

FACTUAL AND LEGAL BACKGROUND

- 6. Plaintiff began his employment as a part-time Blue card Merchandiser beginning on March 16, 2015. Plaintiff was later promoted as a full-time Merchandiser in May 2015.
- 7. During Plaintiff's employment with Pepsico, he met all of Pepsico's legitimate employment and performance expectations.
- 8. In or about October, 2015 about three months prior to terminating Plaintiff's employment, Pepsico became aware that Plaintiff suffers from an anxiety disorder which is a covered ADA disability.
 - 9. At all relevant times, Plaintiff was a qualified individual with a disability.
- 10. On or around August 1, 2015, Plaintiff experienced neck and joint pain while at work, and requested use of a personal day or replacement shift so he could seek medical attention. Defendant rejected Plaintiff's request and demanded that he finish his shift. Plaintiff has been working numerous shifts because of Defendant being short handed which was causing to Plaintiff's stress touch off his anxiety disorder. (Timeline of events and conversations attached).
- 11. When Plaintiff finally was able to see his physician, he was informed he was suffering from nerve damage and spinal tension as a result of his disability.
- 12. On or around October 13, 2015, Plaintiff suffered an anxiety attack when his delivery was rejected by a store receiver. Plaintiff called and sent messages to his Supervisor to notify him that he would need to leave his shift early due to his disability. Defendant allowed

Plaintiff to leave only to confront Plaintiff upon return to work that he was being written up for leaving work falsely accusing him of poor work performance on that day.

- 13. Plaintiff was repeatedly having difficulty with his work phone. On or around October 26, 2015, Defendant informed all Merchandisers that new I-Phones were available for upgrades and pick-up. When Plaintiff arrived at the location per notice that upgrades were being given out, Defendant would not give Plaintiff the phone upgrade although others were being given the upgrade.
- 14. On or about November 3, 2015, Defendant falsely accused Plaintiff of not scanning into the correct location with his phone and lying about his whereabouts on November 2, 2015. Plaintiff explained that he was unable to scan-in at some locations due to technical issues which remained with his current phone.
- 15. On or about November 6, 2015, Plaintiff applied for and was granted short term disability through December 17, 2015. His short term disability was later extended due to his admission in an Outpatient Anxiety Disorder Program.
- 16. On or about January 25, 2016, Plaintiff sent Defendant medical documentation clearing Plaintiff for work without restrictions as of January 30, 2016. Because January 30, 2016 was a Sunday, Plaintiff returned to work on the following Monday February 1, 2016 and was refused to return to work and was escorted from the facility.
- 17. On or about February 4, 2016, Defendant contacted Plaintiff to inquire about his release to work and asked what accommodations could be made for Plaintiff's return to work. Plaintiff requested a transfer to a different facility to be closer to where his anxiety disorder treatments were being performed and to avoid further conflict with the Supervisor causing much of his anxiety. Defendant instructed Plaintiff to return to work on February 9, 2016.

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18. On February 9, 2016 Defendant terminated Plaintiff based on the improper phone

scan prior to Plaintiff taking short term disability leave.

19. Plaintiff retained employment counsel and In June, 2016 Plaintiff filed with the

Illinois Department of Human Rights a Charge of Discrimination-Charge Number 2016CF2623,

Plaintiff only wanted to have his job back and that charge went to mediation where Defendant

further refused to give Plaintiff his job back. Decision was dismissed for more proof of evidence

(mediation date per email attached). Plaintiff was represented by counsel at that time and cannot

continue with that counsel due to lack of funds for court costs and attorney representation

retainer.

WHEREFORE, Plaintiff requests that this Court:

(a) award Plaintiff pecuniary damages in an amount to compensate him for all

damage suffered by virtue of Defendant's decision to deny him a transfer and continuation with

his job causing him loss of wages;

(b) award Plaintiff compensatory and punitive damages in an appropriate amount;

(c) award Plaintiff prejudgment interest on damages recovered, at the prime rate,

compounded annually, or the rate allowed by law; and

(d) award costs, reasonable attorney's fees, and such other relief as it deems just.

Dated: August 23, 2017

Respectfully submitted,

Mark V. Guzman, pro se

9428 So. 55th Ave.

Oak Lawn, IL 60453

773.812.6460

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Guzman, Theresa M.

From:

Twism G <twism82.mg@gmail.com>

Sent:

Tuesday, December 13, 2016 3:51 PM

To:

Guzman, Theresa M.

Subject:

Fwd: Settlement

----- Forwarded message -----

From: "Kerri Feczko" < Kerri@goldmanehrlich.com>

Date: Dec 13, 2016 3:39 PM

Subject: Settlement

To: "Twism G" < twism82.mg@gmail.com>

Cc:

Mark,

The Investigator reached out to me and expressed Respondent's interest in possibly settling before the fact finding conference tomorrow. I listed your backpay and medical expenses, but prioritized your reinstatement above all else at a different facility closer to home; or at the very least, to work under different management.

I will keep you posted of their response. We may not be able to reach settlement before tomorrow, but please keep an eye on your email if they do. If time is urgent, I will call you at the number we spoke on earlier today.

Kerri Feczko
Goldman & Ehrlich
20 South Clark St.
Suite 500
Chicago, IL 60603
312-332-6733
Fax 312-372-7076
Kerri@GoldmanEhrlich.com
www.GoldmanEhrlich.com

OOOOO AT&T LTE

6:24 PM





kyle.leman@pepsico.com Details

10/4 III cheek it out

Sunday 3:59 PM

Are you still at Walmart crystal lake?

Yes

What's up?

This is a high volume store. Put up so far 50 cases of miscellaneous

No worries, just double checking. Thanks for the hard work

Yesterday 8:49 AM

eeeoo AT&T LTE

6:23 PM





jordan.serbus@pepsico.... Details

Contract to the second of the

I cannot hear this phone ring. Need to call on personal

Ok will do, and target went through, it's still got you Walmart if that's correct

Yes am finishing water pallet

Will you be available in about 30m??

Ok, and this is Kyle not Jordan just a heads up, and I won't be able to talk till later tonight. We can either talk later

•••• 6:23 PM





jordan.serbus@pepsico.... Details



So you want to talk later tonight, tomorrow? Or wait to talk to Jordan tomorrow?

> Both actually will do. I know you will be the new lead I'll be following up with so id like to get acclimated with you. Also, if you or both were the ones aware incident i had yesterday.

Plus I don't know else to get in touch with Jordan. Far as I knew it's been him I've been eemmunicating with

•••• 00 AT&T LTE 6:23 PM





jordan.serbus@pepsico.... Details

Kalahuayalahuilkaalahiidaaw lead III be following up with so id like to get acclimated with you. Also, if you or both were the ones aware incident i fiato yesterday.

Plus I don't know else to get in touch with Jordan. Far as I knew it's been him I've been communicating with

Tue, Oct 6, 9:09 PM

Let's plan on talking tomorrow at some point ok?



MANNER OF WHICH TIMESHEETS WERE
RECORDED PRIOR TO NEW SERVINERS &
That Before change IN Sugervisirs.

----- Forwarded message -----

From: "Twism G" < twism82.mg@gmail.com>

Date: Oct 18, 2015 6:16 AM

Subject: Timesheet

To: < kyle.leman@pepsico.com>

Cc:

10/11-7:15(due to unknown schedule at the time) 5:02. 8m 10/12-6:01-2:30. 5m

10/13-scanned in at 5:59 (incidents regarding health disorder effected my abilities to perform in a timely manner.) 9:00 am is time slotted when warehouse/sales floor work began. Scanned out at 10:40. 0m. 10/14-6:00-2:20. 15m 10/16- use of floater day.

FAMILY PRACTICE CENTER OF PALATINE AND IMMEDIATE CARE

371 W Northwest Hwy, Palatine, IL 60067 Tell# (847)776-7800 Fax# (847)776-7623

RETURN TO SCHOOL/WORK

PATIENT: Mark Grezman
DOB: 8-1-15
The above named patient was seen in our office on
8-1-15
Patient may return to school/work on 8-2-15
with no restrictions with following restrictions:
PHYSICIAN MIR Alim
PHYSICIAN SIGNATURE
DATE: 8-1-15



Twism G <twism82.mg@gmail.com>

(no subject)

12 messages

Twism G <twism82.mg@gmail.com>
To: James {PBC} Palmer <James.Palmer1@pepsico.com>

Sat, Aug 1, 2015 at 5:19 AM

Trent.

I am hovering around 34 hours currently. Thursday, I did speak with Jordan on trying to leave around noon. However, at the Addison jewel Glenn arrived around noon and started going over things adjusted as working the load. A helper as you should know arrived I want to say 12:15. I continue to work and help Glenn and Eric. The helper left around 1:10. I finished condensed pallet around 1:30. So, if you needed to give some hours I'm not sure. Also, I am dealing with an issue so far this morning that might force me to use a day if allowed or unsure of how it will work if your are unable to help me out with solutions. Once this is sent, I will be on the road in the event I have to.

Palmer, James {PBC} <James.Palmer1@pepsico.com>
To: Twism G <twism82.mg@gmail.com>

Sat, Aug 1, 2015 at 5:28 AM

I can't afford a call off this morning as I have had 5 call offs already.

Saturday's are pretty easy so please knock it out for me

Sent from my iPad

On Aug 1, 2015, at 5:19 AM, Twism G <twism82.mg@gmail.com> wrote:

Trent,

I am hovering around 34 hours currently. Thursday, I did speak with Jordan on trying to leave around noon. However, at the Addison jewel Glenn arrived around noon and started going over things adjusted as working the load. A helper as you should know arrived I want to say 12:15. I continue to work and help Glenn and Eric. The helper left around 1:10. I finished condensed pallet around 1:30. So, if you needed to give some hours I'm not sure. Also, I am dealing with an issue so far this morning that might force me to use a day if allowed or unsure of how it will work if your are unable to help me out with solutions. Once this is sent, I will be on the road in the event I have to.

Palmer, James {PBC} < James.Palmer1@pepsico.com>
To: Twism G < twism82.mg@gmail.com>

Sat, Aug 1, 2015 at 5:36 AM

Start at 345 s Rand rd in lake Zurich. It's delivering now

Sent from my iPad

On Aug 1, 2015, at 5:19 AM, Twism G <twism82.mg@gmail.com> wrote:

Trent,

I am hovering around 34 hours currently. Thursday, I did speak with Jordan on trying to leave around noon. However, at the Addison jewel Glenn arrived around noon and started going over things adjusted as working the load. A helper as you should know arrived I want to say 12:15. I continue to work and help Glenn and Eric. The helper left around 1:10. I finished condensed pallet around 1:30. So, if you needed to give some hours I'm not sure. Also, I am dealing with an issue so far this morning that might force me to use a day if allowed or unsure of how it will work if your are unable to help me out with solutions. Once this is sent, I will be on the road in the event I have to.

Twism G <twism82.mg@gmail.com>

To: James {PBC} Palmer < James.Palmer1@pepsico.com>

Sat, Aug 1, 2015 at 5:43 AM

Yup. Am doing so

[Quoted text hidden]

Palmer, James {PBC} < James.Palmer1@pepsico.com>

To: Twism G <twism82.mg@gmail.com>

Sat, Aug 1, 2015 at 5:44 AM

Thanks dude. Just hustle today and you can be done pretty early.

Sent from my iPad
[Quoted text hidden]

Twism G <twism82.mg@gmail.com>

To: James {PBC} Palmer < James Palmer1@pepsico.com>

Sat, Aug 1, 2015 at 5:49 AM

Okay, always try to

[Quoted text hidden]

Twism G <twism82.mg@gmail.com>

To: James {PBC} Palmer < James.Palmer1@pepsico.com>

Sat, Aug 1, 2015 at 6:01 AM

Here

[Quoted text hidden]

Twism G <twism82.mg@gmail.com>

To: Aisha Hurston <aishanhurston@gmail.com>

Thu, Oct 15, 2015 at 2:55 AM

Here is a instance where I tried reaching out for help but Trent basically dismissed the fact I stated I am having certain issues and possibly needed some help.

[Quoted text hidden]

Twism G <twism82.mg@gmail.com>

To: Aisha Hurston <aishanhurston@gmail.com>

Thu, Oct 15, 2015 at 2:57 AM

[Quoted text hidden]



RIGHT OF REIMBURSEMENT (ROR)



YOUR CLAIM FOR DISABILITY BENEFITS CANNOT BE PROCESSED WITHOUT THIS FORM

Employee Name: MARK V. GUZM	Claim Nbr: 30154850681-0001		
Sedgwick Client Nbr: 1966	Employer Name: PepsiCo		
Last Day Worked: 11/02/2015	Leave Begin Date: 11/03/2015	Date Prepared: 11/10/2015	

The disability plan of your employer may require your employer to collect any duplicate payments that you may receive from different sources for the same illness, injury or pregnancy. This form confirms your understanding of your employer's right to collect these duplicate payments:

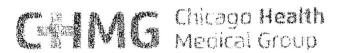
The Agreement-This applies to all Claim Processors appointed by my employer, including but not limited to those who administer my employers Group Health, Short-Term Disability, Long—Term Disability and Workers' Compensation Plans. In connection with an illness or injury, I have applied for plan benefits. In return for payment of these benefits, If the payments for the same illness or injury are received, I acknowledge I am obligated to reimburse the plan, as stated in the plan, up to 100%, or to the full extent of any net recovery. "Net Recovery" means all other payments received that arise from the illness or injury, after reduction of such payments by any attorney's fees and other legal expenses that may be incurred in obtaining the recovery. In the event that full reimbursement would be greater than the amount of the net recovery, only the net recovery needs to be repaid. The requirement to reimburse the plan applies no matter how the recovery is characterized.

I agree to keep the Claim Processors and my employer informed as to the status of my claim against any period or entity so that the Claims Processor can take whatever action is necessary to protect the plans, or my employer's interest. I also agree to authorize any person, including but not limited to, any insurance company, claim processor, attorney, hospital, physician, surgeon or pharmacist to release to the Claim Processor appointed by my employer, any information pertaining to this claim.

I attest to the fact that my request for plan benefits is the result of a valid illness or injury. If I receive a plan benefit greater than I should have been paid, I understand that my employer or the plan's Claim Processor has the right to collect overpayment as specified in the plan, including but not limited to, the right to reduce future benefit payments. Lastly, I acknowledge that this agreement is intended to confirm and clarify my obligations, and I understand that I am required under the terms of the plans to reimburse the plans in accordance with this agreement.

Complete and return this form via fax to (866) 315-0607 or mail to:
The PepsiCo Leave and Claim Center / P.O. Box 14424 / Lexington, KY 40512-4424
For assistance, call the PepsiCo Leave and Claim Center at 855-PEP-CALL (855-737-2255)





7020 W 79th Street Bridgeview, IL 60455 Phone: 708-589-8280

Fax: 708-599-8306

Doctor's Note

Date 12/09/2015

Patient

GUZMAN, MARK

D.O.B.

05/03/198

Mark Guzman was seen here today for a follow up medical appointment. He has seen further specialist providers and will be initiating treatments with them as well. We are requesting another 1 month until 1/9/16 for him to be off work while he undergoes these evaluations and treatments. Thank you.

Thank you,

Electronically Signed by: OTTO LEE, MD



Palos Medical Group

Mona Lal, M.D.

Board Certified Psychiatrist

12255 S. 80th Avc.

Suite 202

Palos Heights, IL 60463

Phone: (708) 923-7878

Fax: (708) 923-7888

11/13/2015 9:29:08 AM -0800 SEDGWICK

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Employee Name: MARK V. GUZMAN Claim Number: 30154850681-0001 Medical Due Date: 11/26/2015

Attending Physician's Statement To Be Completed by Physician (DR.OTTO) Complete and return via fax to 866-315-0607 or mail to:

PepsiCo Leave & Claim Center, P.O. Box 14424, Lexington, KY 40512-4424 For assistance, call 855-737-2255

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11/13/2015 9:29:08 AM -0800 SEDGWICK

MARK V. GUZMAN

30154850681-0001

Employee Name:

Claim Number:

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12.	Have there been any Emergency Room visits OR Hospitalizations during this current disability period? Yes No by If Your D Streamant Room visits D Hospitalizations during this current disability period?					
	If Yes: □ Emergency Room visit □ Hospitalization □ 23 hour admission Name and address of hospital or facility					
	Date of admission:// Date of discharge:/_/ Indicate treatment provided:/					
13.	Has any surgical procedure related to current disability been performed or is any anticipated? Yes D No D List the name of the procedure: CPT code:					
	Date of procedure://					
14.	Has patient been referred to other physician(s)/specialist? Yes \(\square\) No \(\text{ID} \) If yes, provide physician name, specialty, and telephone number. \(\square\) \(\text{Most} \)					
15.	List specific functional limitations of Activities of Daily Living (ADL's):					
16.	Has patient been given any driving restrictions for this disability period? Yes □ No ☑ If yes please describe:					
17.	Based on your personal knowledge and treatment, how long has the patient been totally disabled by this sickness and prevented from working? From 11.6.1.5 to and including/					
18.	Has the patient recovered sufficiently to return to work? Yes No No					
	If "Yes", give the date the patient was able to return to work					
	If "No", in your opinion when, may work be resumed? (Please do not use "indefinite", "unknown", "undetermined", etc.) If a					
	date cannot be determined, please estimate in days, weeks or months, the total duration of disability.					
19.	Has the patient recovered sufficiently to return to restricted work? Yes □ No □					
	If "Yes", indicate date restrictions begin:// Date restrictions end://					
	Restriction (s) required:					
lease :	attach all office notes, History & Physical, results of x-rays, laboratory tests, MRI Reports, etc, if relevant.					
The Ge equesti o comp format imily m enetic i	netic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from any or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. By with this law, we are asking that you not provide any genetic information when responding to this request for medical ion. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or ember's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or ember receiving assistive reproductive services."					
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11/13/2015 9:29:08 AM -0800 SEDGWICK

PAGE 2 OF 4



PHYSICIAN'S CERTIFICATE FOR DISABILITY BENEFITS

IMPORTANT: READ INSTRUCTIONS BELOW REGARDING THE COMPLETION OF THE ATTACHED FORM FOR YOUR PATIENT LISTED BELOW:

Patient's Name: GUZMAN, MARK V.		Phone: (773)812-6460	Claim Nbr: 30154850681-0001
Patient's Date of Birth.	Medical	Records Nbr (If applicable):	

INSTRUCTIONS FOR PHYSICIAN: DR.OTTO

- Please complete the attached attending physician's statement form to certify your patient's disability as soon as possible. Fax the completed form to (866) 315-0607.
- If you have questions about this form or if you would prefer to phone the information to Sedgwick, our customer service telephone number is 855-PEP-CALL (855-737-2255). Someone is available to speak with you between the hours of 5:00 a.m. to 5:00 p.m., Pacific Time.
- Benefit payments cannot be processed for your patient unless each question, as appropriate, is answered.



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7020 W 79th Street Bridgeview, IL 60455 Phone: 708-599-8200

Fax: 708-599-8306

Doctor's Note

Date 01/21/2016

Patient

GUZMAN, MARK

D.O.B.



Mark Guzman was seen here today for a follow up medical appointment. He has also received treatment from Dr. Lal / Cynthia Blanton, LCSW through their Psychiatric Intensive Outpatient Program from 12/3/15 - 1/15/16. He will still require treatment for his anxiety symptoms, and we will continue him on prescription medications. I recommend a return to work date of 1/30/16 without restriction. Thank you.

Thank you,

Electronically Signed by: OTTO LEE, MD